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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

JOSEPH LIEBERZ,

Plaintiff and Appellant,

v.

THE HUDSON INSTITUTE OF
MINERALOGY,

Defendant and Respondent.

B288035

(Los Angeles County
Super. Ct. No. 17STPB05114)

APPEAL from an order of the Superior Court of
Los Angeles, Maria E. Stratton, Judge. Reversed.

Lester & Cantrell and Colin A. Northcutt for Plaintiff and
Appellant.

Brown Rudnick, Joel S. Miliband, Shoshana B. Kaiser;
Good Wildman and Nikki Presley Miliband for Defendant and
Respondent.

Joseph Lieberz, in his capacity as beneficiary (Lieberz), appeals from an order on his petition for instructions concerning the distribution of The Rock Currier Living Trust Dated November 11, 2014 (the trust). Lieberz brought the petition in his capacity as trustee of that trust (trustee). The trust provides for a gift to “Mindat.org, located in Hong Kong” on the condition that federal law recognizes it as a nonprofit organization under section 501, subdivision (c)(3) of the Internal Revenue Code (501(c)(3)).¹ The trust further provides that the gift should pass to Lieberz if the condition fails. Both parties attached documents to their respective pleadings below. There were no declarations describing these documents or live testimony at oral argument below.

At the parties’ urging that the trust’s language is unambiguous, the trial court interpreted the trust, and ordered

¹ 501(c)(3) provides that the organizations described as follows are exempt from federal taxation: “Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.”

trustee to distribute the gift to Mindat.org. It reasoned based on the documents attached to the pleadings that the Mindat.org referenced in the trust is the assumed name of another entity that is, itself, a 501(c)(3) nonprofit organization. That other entity is respondent, The Hudson Institute of Mineralogy (Hudson).² The trial court found that because Mindat.org is an assumed name of Hudson, it is one and the same as Hudson, and could use Hudson's status as a 501(c)(3) nonprofit organization to satisfy the trust's condition that it be such an organization. Additionally, the trial court declined Lieberz's request to hold an evidentiary hearing on the issue of the trustor, Rock Currier's intent, and overruled Lieberz's evidentiary objections to the documents attached to Hudson's pleadings.

Lieberz contends the trial court erred in (1) interpreting the trust; (2) denying his request for an evidentiary hearing; and (3) summarily overruling his evidentiary objections.

We conclude the trial court erred in failing to hold an evidentiary hearing because there were contested material issues as to what is the entity referenced in the trust and whether that entity is one and the same as Hudson for purposes of using Hudson's 501(c)(3) status to satisfy the trust's condition that the entity be a 501(c)(3) nonprofit organization. These contested issues could not be resolved merely upon review of documents attached to pleadings in a probate proceeding. Accordingly, we reverse.

² In its response to the petition filed below, Hudson described itself as "a not for profit 501(c)(3) private foundation dedicated to the study and preservation of minerals and to foster mineralogical education among the general public."

FACTUAL AND PROCEDURAL BACKGROUND

We detail the pleadings and procedural history below because of their relevance to the substantive and procedural issues on appeal.

A. Currier Created The Trust Naming Mindat.org As A Beneficiary

Currier created a living trust dated November 11, 2014. The trust provides that the trust estate's residue shall be distributed 50 percent to Lieberz and 50 percent to "Mindat.org, located in Hong Kong." (Capitalization omitted.) The trust further provides, "In the event that Mindat.org is not recognized or approved by the United States as a 501(c)(3) non-profit organization, this gift shall fail and shall be distributed" to Lieberz. (Capitalization omitted.) Currier died on September 25, 2015.

B. Trustee Petitioned For Instructions Concerning How To Distribute The Gift To Mindat.org

On June 12, 2017, trustee, describing himself as "the current acting Trustee," filed a verified "petition for instructions as to distribution of share to Mindat.org" under Probate Code³ section 17200.⁴ (Capitalization omitted.) In that petition, trustee

³ Undesignated statutory citations are to the Probate Code.

⁴ Section 17200, subdivision (a) authorizes "a trustee or beneficiary of a trust [to] petition the court . . . concerning the internal affairs of the trust" Subdivision (b)(1) states "[p]roceedings concerning the internal affairs of [a] trust" include

stated that Mindat.org does not appear to be recognized or approved by the United States as a 501(c)(3) nonprofit organization. To support this assertion, trustee cited the following: Mindat.org's absence in a search of the Internal Revenue Service (IRS) database of exempt organizations and other websites regarding charitable organizations; the Mindat.org website stating that Mindat.org "is an outreach project of [Hudson], a 501(c)(3) not-for-profit organization"; the IRS database identifying Hudson as a private foundation located in Virginia; and Hudson's website containing the text "dba Mindat.Org" and stating, "Our primary outreach effort is the widely known[]website: www.mindat.org"

Trustee further averred that he does not know what it meant for Mindat.org to be an "outreach project" or "outreach effort"; one of Mindat.org's two founders appears to describe Mindat.org and Hudson as two separate organizations; one of Mindat.org's two owners might be based in the United Kingdom; and Mindat.org listed its contact information as the United Kingdom owner's e-mail address and Hudson's physical address in Virginia.

Trustee also stated in his petition that his attorney requested evidence from Hudson demonstrating that Mindat.org is a recognized 501(c)(3) organization. Finally, trustee stated, "in reviewing the Trust as a whole, [Currier]'s intent is clear that

"[d]etermining questions of construction of a trust instrument." We note section 9611, subdivision (a) authorizes the trial court to "instruct the personal representative . . . in the . . . disposition . . . of the estate"

Mindat[.org] itself must be recognized . . . as a 501(c)(3) nonprofit organization, otherwise the gift fails.”

Trustee attached as exhibits to his petition the following documents: (1) a copy of the trust document; (2) printouts of Internet searches showing the absence of Mindat.org in the IRS and other websites; (3) a printout of the IRS website identifying Hudson as a 501(c)(3) nonprofit organization; (4) a printout of the Internet Corporation for Assigned Names and Numbers (ICANN)⁵ webpage showing that the individual registrant for the Mindat.org domain name listed a United Kingdom address as his mailing address; and (4) copies of his attorney’s correspondence with Hudson. The correspondence included the following documents provided by Hudson to trustee: (1) a letter from the IRS memorializing its determination that Hudson was tax-exempt; (2) a New York State certificate of assumed name stating that Mindat.org was an assumed name of Hudson; (3) a New York State consent to filing, recognizing Mindat.org as Hudson’s assumed name; and (4) Hudson’s 2015 federal tax return.

⁵ We observed in an earlier opinion that ICANN was “‘created in 1998 to manage and coordinate domain name systems.’” (*In re Forchion* (2011) 198 Cal.App.4th 1284, 1309.)

C. Hudson Responded To The Petition, Arguing The Gift Should Be Distributed To Mindat.org Because Mindat.org Is Hudson's Assumed Name And Hudson Is A 501(c)(3) Nonprofit Organization

Hudson filed a verified response to trustee's petition, praying that the trial court instruct trustee "to make distribution to [Hudson] doing business as Mindat.org."

In that response, Hudson stated that Currier was one of its board members and "an integral part of" discussions between Hudson and the Mindat.org founders "to bring Mindat[.org] into [Hudson] as [Hudson's] primary outreach and education effort for mineral collectors, scientists and the general public." Currier believed the public and Hudson would be well served by that arrangement, and there were many discussions about how to incorporate Mindat.org under Hudson's 501(c)(3) status. In 2014, New York State approved Hudson's application to operate under an assumed name, and thus, Hudson added "dba Mindat.org" to its official name. Mindat.org and Hudson are one and the same. Mindat.org itself is not in Hong Kong, but one of its founders is located there and is a member of Hudson's board of directors.

Hudson further stated that Mindat.org does not file separate tax returns, and all of Mindat.org's taxable information is reported on Hudson's tax return. Currier is identified in Hudson's tax return as a board member. Hudson's tax return also identifies a \$5,000 gift Currier made to Hudson, and that gift indicates Currier's "ongoing intent and support with respect to [Hudson] dba Mindat.org." Mindat.org is an "outreach project" of Hudson. Mindat.org is a website name and assumed name of Hudson, but not a separate legal entity. Thus, Hudson concluded that it is entitled to the distribution as Mindat.org's owner.

Attached to Hudson's response were copies of the following four exhibits, each of which was also appended to trustee's verified petition: (1) the trust document; (2) the IRS webpage indicating Hudson's 501(c)(3) status; (3) the IRS letter stating the IRS determined Hudson is tax-exempt; (4) Hudson's 2015 federal tax return; (5) Hudson's assumed name certificate and consent to filing of that certificate with the New York State Education Department; (6) attorney correspondence; and (7) one of two versions of a deed of gift of certain intellectual property concerning Mindat.org to Hudson.

D. Trustee Filed A Supplement To His Petition And Lieberz Filed A Response To The Petition, Both Contending The Gift Should Fail And Instead Be Distributed To Lieberz

Trustee then filed a verified supplement to his petition. In that supplement, trustee stated his belief "that the gift to Mindat.org fails based on the explicit language of the Trust." (Underlining omitted.) Trustee reasoned that, because Mindat.org was not located in Hong Kong, a legal entity, or recognized by the IRS as a 501(c)(3) nonprofit organization, the gift to Mindat.org should be distributed to Lieberz.

Lieberz also submitted a verified response to trustee's petition. In that response, Lieberz stated, "as a matter of law the gift to Mindat.org fails based on the clear and unambiguous language of the Trust." The balance of Lieberz's response essentially repeated trustee's reasoning and references to exhibits that trustee made in his supplement to his petition. Lieberz also observed that the trust makes no reference to Hudson. Lieberz further observed that the trust's creation postdated Hudson's receiving the Mindat.org domain name and

seeking to use Mindat.org as its assumed name. Thus, Lieberz argued Currier was aware Mindat.org was not itself a 501(c)(3) nonprofit organization and Mindat.org's being Hudson's assumed name was irrelevant to interpreting the trust.

Along with his response, Lieberz submitted a request for judicial notice of (1) trustee's petition; (2) Hudson's response thereto; and (3) a copy of the IRS webpage showing the absence of Mindat.org in the IRS database of tax-exempt organizations.

E. At The Initial Hearing On Trustee's Petition, The Parties' Attorneys Agreed The Trust Is Unambiguous; The Trial Court Continued The Hearing To October 3, 2017

On August 22, 2017, the trial court held a hearing on trustee's petition. At the hearing, Lieberz's counsel stated he agreed with Hudson's counsel's view that the trust language is unambiguous, and the trial court could decide the petition "on the papers." The trial court continued the hearing to October 3, 2017 in part to allow the parties to mediate their dispute.

F. Hudson And Lieberz Filed Additional Briefs Reiterating Their Positions

Subsequently, Hudson filed a further verified response to trustee's petition. Hudson argued that Lieberz's interpretation of the trust—that Currier intended the gift for Mindat.org only if Mindat.org were a stand-alone 501(c)(3) nonprofit organization—

would thwart Currier's intent.⁶ Hudson asserted the correct analysis involved two steps: First, the trial court had to determine whether the trust language is ambiguous and whether the condition to receive the distribution occurred here; Second, it had to determine whether Mindat.org was a 501(c)(3) nonprofit organization.

As to step one, Hudson contended the trust language is unambiguous. As to step two, and to address the trust document's identifying Mindat.org's location as Hong Kong, Hudson argued extrinsic evidence would "solidify that [Hudson] is the Mindat.org that [Currier] identified to receive distribution of Trust assets." Hudson reasoned Mindat.org was mere intellectual property, one of its founders was located in Hong Kong, and its founders "gifted Mindat.org and its intellectual property rights" to Hudson.

To its supplemental response, Hudson attached a copy of a second version of the deed of gift of certain intellectual property regarding Mindat.org to Hudson.⁷

Lieberz filed a verified reply to Hudson's further response and a request for judicial notice of the same three documents of which it previously requested judicial notice as set forth above

⁶ Hudson also asserted that trustee's petition was untimely but has not raised this contention on appeal. Thus, it is forfeited.

⁷ The two deeds of gift are significant because they raise questions about what is the Mindat.org entity referenced in the trust, and whether that entity is one and same as Hudson and can use Hudson's status as a 501(c) nonprofit organization to satisfy the trust condition that it be such an organization. We describe the deeds in our discussion below.

plus Hudson’s further response to the petition. Lieberz reiterated his position that the gift to Mindat.org must fail because it was not, itself, a 501(c)(3) nonprofit organization. Lieberz characterized Hudson’s further response as “speak[ing] out of both sides of [the] mouth” in stating that the trust language itself is unambiguous, but then proffering evidence to prove that Mindat.org is Hudson’s assumed name. Lieberz reiterated that the trust language is unambiguous and the extrinsic evidence Hudson offered with its further response to the petition is inadmissible. Lieberz argued, in the alternative, Hudson’s evidence proved only that Mindat.org was not a stand-alone 501(c)(3) nonprofit organization. Lieberz demanded an evidentiary hearing “if the [trial] court concludes the trust is ambiguous” while parenthetically noting, “it is not.” (Bold, underlining, and capitalization omitted.)

Along with his reply, Lieberz filed a set of 33 evidentiary objections to factual statements made in and exhibits attached to Hudson’s initial and further responses to trustee’s petition. Specifically, Lieberz objected to Hudson’s responses in their entirety, statements about its 501(c)(3) status, the IRS documents, the federal tax return, statements about Currier’s involvement with Hudson, statements about Hudson’s acquisition of Mindat.org, the New York State assumed name certificate, and statements about the Hong Kong location of one of Mindat.org’s founders. Lieberz objected on several grounds, including hearsay and lack of foundation.

G. At The Continued Hearing, The Parties Reiterated Their Agreements That The Trust Is Unambiguous And The Trial Court Judge Could Determine Its Meaning On The Papers

On October 3, 2017, the parties appeared in the trial court for the hearing that was continued from August 22, 2017. Lieberz's counsel reiterated his view "that the trust language is very clear and can be decided by the judge on its . . . face." Lieberz's counsel also "requested a hearing if the court concludes that [the trust language is] ambiguous."

In response, Hudson's counsel reiterated her agreement with Lieberz's counsel that the trust language is unambiguous, but that "[t]he court has to look at certain information to see if that condition has been met, whether or not [Mindat.org] is a 501(c)(3)." Hudson's counsel referred to Hudson's assumed name certificate, which stated that Hudson was doing business as Mindat.org, and other facts Hudson mentioned in its briefs, which we have set forth above.

H. The Trial Court Ordered Trustee To Distribute The Gift To Mindat.org, Reasoning That Mindat.org Was Hudson's Assumed Name

The trial court took trustee's petition under submission and issued a minute order instructing trustee to distribute 50 percent of the trust residue to Mindat.org and overruling Lieberz's evidentiary objections. The minute order did not expressly

address Lieberz's request for an evidentiary hearing or his two requests for judicial notice.⁸

The trial court found that the trust is unambiguous and Currier's "intent is clearly expressed without regard to extrinsic evidence of intent." It found, "Mindat.org is an arm of and assumed name for Hudson . . . , which is itself a [] 501(c)(3) organization. That the website itself and the domain name is not a 501(c)(3) organization does not defeat the gift. A reading of the trust that defeats the gift just because Mindat.org is an arm of Hudson and not a stand-alone 501(c)(3) organization does not effectuate Currier's intent. Moreover, [Lieberz's reading of the trust] is an overly strict and overly literal reading."

Lieberz timely appealed this order.⁹ (§§ 1300, subd. (c) ["an appeal may be taken from the making of [an order] instructing . . . a fiduciary"], 1304, subd. (a) ["With respect to a trust, the grant or denial of [any final order under section 17200 with exceptions not relevant to this appeal] is appealable"]; *Boys & Girls Club of Petaluma v. Walsh* (2008) 169 Cal.App.4th 1049, 1057 [referring to order on proceedings listed under section 17200, subdivision (b) as final]; *Manson v. Shepherd*

⁸ Hudson did not request judicial notice of any fact or document it proffered in its responses to the petition, including Hudson's being a 501(c)(3) nonprofit organization, the IRS documents indicating Hudson's 501(c)(3) status, Mindat.org's being Hudson's assumed name, and the New York State assumed name certificate recognizing Mindat.org as Hudson's assumed name.

⁹ The trial court subsequently signed a proposed order that repeated the findings and conclusions set forth in the minute order.

(2010) 188 Cal.App.4th 1244, 1258, fn. 7 (*Manson*) [citing section 1304, subdivision (a) as authorizing appeal of order on petition a trustee and beneficiary brought under section 17200].)

STANDARD OF REVIEW

Generally, “[t]he applicable standard of review [for an order on a petition brought under section 17200] is . . . abuse of discretion. We are mindful, however, that ‘[t]he abuse of discretion standard is not a unified standard; the deference it calls for varies according to the aspect of a trial court’s ruling under review. The trial court’s findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious.’” (*Manson, supra*, 188 Cal.App.4th at pp. 1258–1259.) We review the trial court’s denial of Lieberz’s request for an evidentiary hearing for abuse of discretion. (See *Estate of Lensch* (2009) 177 Cal.App.4th 667, 676 (*Lensch*) [“In *Estate of Bennett* (2008) 163 Cal.App.4th 1303 [*Bennett*], . . . the court held it was an abuse of discretion to deny a request for an evidentiary hearing”].)

DISCUSSION

As set forth above, the trial court denied Lieberz’s requests for an evidentiary hearing, relied solely on the parties’ pleadings and attached documents, and concluded Mindat.org satisfied the trust’s condition that it be a 501(c)(3) nonprofit organization. The trial court reasoned that Mindat.org is an assumed name of Hudson, and as such, Mindat.org and Hudson are one and the same. Thus, Mindat.org could use Hudson’s status as a 501(c)(3) entity to satisfy the trust’s condition that Mindat.org be such an entity.

We conclude the trial court should have held an evidentiary hearing because (1) the trial court assumed the Mindat.org referenced in the trust is the same Mindat.org referenced in Hudson’s assumed name certificate; and (2) Hudson’s own evidence—to wit, the two deeds of gift—created a dispute over the identity of the Mindat.org entity referenced in the trust and whether that entity is one and the same as Hudson.

A party’s right to an evidentiary hearing in a contested probate proceeding flows from section 1022. That section provides, “An affidavit or verified petition shall be received as evidence when offered in an *uncontested* [probate] proceeding.” (§ 1022, italics added.) Accordingly, “when challenged in a lower court, affidavits and verified petitions may *not* be considered as evidence at a *contested* probate hearing.” (*Evangelho v. Presoto* (1998) 67 Cal.App.4th 615, 620 (*Evangelho*), italics added.) This is so because a trial court may not receive affidavits as evidence unless permitted by statute, and “no statutory provision authoriz[es] the substitution of affidavits for oral evidence in a contested probate proceeding.” (*Estate of Fraysher* (1956) 47 Cal.2d 131, 135.)

Appellate courts have applied section 1022 in requiring an evidentiary hearing in a contested probate proceeding. (*Lensch, supra*, 177 Cal.App.4th 667 [whether father’s death preceded grandmother’s death contested, thus implicating antilapse statute in determination of whether grandchildren should receive portion of grandmother’s estate]; *Bennett, supra*, 163 Cal.App.4th 1303 [whether petitioners assigned their share of decedent’s real property interest to corporation through fraud contested where corporation alleged its representatives made no representations to petitioners].)

Here, Hudson attached to its pleadings below two deeds of gift purporting to convey certain intellectual property concerning Mindat.org to Hudson.¹⁰ Both deeds are dated January 27, 2014.

The first deed is unsigned and does not identify the donor. Instead, it lists at the bottom of the document the names Jolyon Paul Ralph (Ralph) and Lan Yee Chau (Chau) as “founders and owners of mindat.org.” The document gives to Hudson “intellectual property items and physical assets, which together make up the popular mineralogical website ‘mindat.org’ ” with certain exceptions discussed below. Included in the gift are the “intellectual property rights to the name mindat.org.”

The second deed identifies the donor as “Mindat.org Ltd (a Hong Kong based limited liability company)” and is signed by Ralph and Chau as directors “[f]or and on behalf of Mindat.org Ltd.” Regarding rights to “the name mindat.org,” it provides Mindat.org Ltd retains ownership of the Mindat.org “logo and crystal mark branding and all rights to use this commercially,” and gives Hudson a license to use that logo and mark branding “on the basis that an agreed percentage of profits from such

¹⁰ Lieberz references the two different deeds obliquely in a footnote in his opening appellate brief. We acknowledge Lieberz could have highlighted these deeds more prominently in his appellate briefing. (See *Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 71 [appellate court may decline to address arguments perfunctorily asserted in footnote].) It is clear, however, Lieberz asserted from the time he, as trustee, filed his petition that one of Mindat.org’s founders and owners, Jolyon Paul Ralph, described Hudson and Mindat.org as separate entities, and the trial court noted that assertion in its minute order. Thus the issue was before the trial court and is before us now.

activity will go to [Hudson] to help continue to operate the mindat.org website.”

Both deeds reference various computer files “that comprise the ‘mindat.org’ database and web site,” but with the following “exceptions/limitations”: ownership of certain “open-source third party source code projects . . . remains with the original authors”; a “‘cform’ system [that] is owned by Jolyon Ralph and is used by him in multiple projects” is provided by license instead of gift of ownership; and “[v]arious source code files, data files and database schemas . . . are [not] included within the gift.” The deeds also require Hudson to provide a license to Ralph to use those source code files, data files, and database schemas for two of his other “web projects” and to any future owners of those projects. The deeds describe Mindat.org variously as “a Hong Kong based limited liability company” with the designation “Ltd”; “the popular mineralogical website”; “[t]he mindat.org domain name”; “the ‘mindat.org’ database”; and “the name mindat.org.”

These deeds reveal an issue of whether Mindat.org, the website, is the same entity as Mindat.org Ltd (a Hong Kong based limited liability company). More significantly, they call into question the trial court’s reliance on the assumed name certificate attached to Hudson’s pleadings to conclude that Hudson and the Mindat.org referenced in the trust are one and the same entity.

First, the signed deed itself suggests that the Mindat.org referenced in the trust and Hudson may be distinct entities. Specifically, the signed deed recites that Mindat.org Ltd (a Hong Kong based limited liability company) retains Mindat.org’s logo and crystal mark branding, and gives Hudson a right to use

that logo and mark branding subject to negotiating with Hudson a split of profits from such use.

Second, both deeds recite that whatever Mindat.org is, it retains certain source code projects, a “cform” system, and various code and data files, and licenses back those code and data files to Ralph, a founder and owner of Mindat.org according to the unsigned deed, and a director of Mindat.org Ltd (a Hong Kong based limited liability company) according to the signed deed, for use in his other projects.

Additionally, the signed deed describes Mindat.org Ltd as “a Hong Kong based limited liability company,” and the trust identifies Mindat.org as “located in Hong Kong.” The latter entity’s “Ltd” designation implies it is a for-profit business, as does the reference to splitting profits with Hudson for use of the above-referenced logo and mark branding.

Accordingly, there is a contested issue as to whether Mindat.org, the website, or Mindat.org Ltd (a Hong Kong based limited liability company) is the entity referenced in the trust. These documents also demonstrate that the trial court erred in assuming that Hudson and the entity referenced in the trust are one and the same merely because an assumed name certificate recites that Mindat.org is an assumed name of Hudson. This error was compounded when the trial court concluded that the entity referenced in the trust is a 501(c)(3) nonprofit organization because that entity is one and same as Hudson. Without that assumption, the gift would fail because the beneficiary referenced in the trust had to be a “recognized” 501(c)(3) nonprofit organization.

Thus, the trial court erred in resolving the petition on the papers, and Lieberz was entitled to an evidentiary hearing on

what is the Mindat.org entity referenced in the trust and whether that entity is one and the same as Hudson for purposes of using Hudson's status to satisfy the trust's 501(c)(3) condition. (*Evangelho, supra*, 67 Cal.App.4th at p. 620.)

It is understandable that the trial court may not have fully appreciated the need for an evidentiary hearing because both Lieberz and Hudson stated the trust is unambiguous and thus the trial court could interpret the trust within its four corners. Adding to the confusion was Hudson's further response to the petition below, in which it stated Ralph and Chau "gifted Mindat.org and its intellectual property rights to" Hudson, and cited the signed deed to support its contention that Mindat.org and Hudson are one and the same. As we have detailed above, that deed raises more questions than Hudson's assertion would admit. The fact that Hudson attached two different versions of the deed of gift to its pleadings to support the same proposition without noting their differences may have also confused the trial court.

At oral argument below, both sides conceded extrinsic evidence is admissible only if the trust itself were ambiguous or to demonstrate that a seemingly unambiguous provision is, in fact, ambiguous. Contrary to Hudson's assertion that there were no contested material issues, Lieberz never admitted the Mindat.org referenced in the trust is one and the same as Hudson, or that the entity referenced in the trust is the same as the Mindat.org referenced in the assumed name certificate. Also, Hudson admitted an evidentiary hearing would be warranted if there were a "question as to whether this [the entity referenced in the trust] is the Mindat.org." Without knowing what is the entity referenced in the trust, the trial court could not have

properly determined that the entity referenced in the trust could assume Hudson's status as a 501(c)(3) organization. In short, the trial court erred in failing to hold an evidentiary hearing. In light of our ruling, we do not address Lieberz's other contentions.

DISPOSITION

The order is reversed. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED.

BENDIX, J.

We concur:

CHANEY, Acting P. J.

WEINGART, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.